

**IN THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL**

**Civil Appeal No. 198 of 2011**

**BETWEEN**

**MAY JOSEPHINE HUMPHREY**

**Appellant**

**AND**

**TRINIDAD AND TOBAGO NATIONAL PETROLEUM MARKETING COMPANY  
LIMITED**

**Respondent**

**PANEL:     A. Mendonça, J.A.  
              P. Jamadar, J.A.  
              G. Smith, J.A.**

**APPEARANCES:   Mr. F. Hosein, S.C. and Mr. R. Dass for the Appellant  
                      Mr. Delzin for the Respondent**

## REASONS

### **Delivered by A. Mendonça J.A.**

1. On January 26<sup>th</sup>, 2017, we gave our decision on the application before the court and gave brief oral reasons for so doing. We now reduce our reasons to writing and expand on them.
2. Damages pursuant to the order of a trial judge are assessed by the Master in favour of the appellant. On appeal to the Court of Appeal the award of damages is varied upwards. Does interest accrue pursuant to section 13 (1) of the Remedies of Creditors Act (the Act) on the varied award from the date of the assessment of damages by the Master or from the date of the order of the Court of Appeal? That is the issue that is raised on the application before this court.
3. The background facts and circumstances can be briefly stated and in so doing we draw primarily from the notice of application filed by the applicant, which, we think, accurately sets out the relevant background.
4. In 1963, May Josephine Humphrey (the appellant), leased premises to Trinidad and Tobago National Petroleum Marketing Company Limited (the respondent), for a term of 30 years with an option to renew for a period of 20 years. In 1986, before the expiry of the term of the lease, there was an agreement between the parties to surrender the lease. The respondent, however, did not live up to its end of the agreement and assigned the lease to a third party. The assignee entered into possession of the demised premises and purported to exercise the option of renewal under the lease. The assignee, after the expiration of the original lease, remained in possession claiming an entitlement to a further term of 20 years pursuant to the option contained in the lease.

5. On March 19, 1991, the appellant commenced these proceedings claiming that the agreement to surrender the lease was effective and the continuing occupation of the demised premises by the assignee was unlawful. The appellant sought damages for the continued occupation of the demised premises.
6. The trial judge found that there was a non-binding agreement to surrender the lease. However, because of the respondent's unconscionable conduct the judge found that it was inequitable to allow the respondent to resile from the agreed position. The trial judge consequently gave effect to the agreement in equity and made an order for the payment of damages in lieu of specific performance. The damages were to be assessed by a Master in Chambers.
7. The assessment was heard before Master Mohammed (as she then was) on July 8, 2011. The Master awarded general damages in favour of the appellant in the sum of \$138,240. The Master also awarded interest on that sum at the rate of 9% per annum from February 18, 1991 to the date of assessment.
8. The appellant was dissatisfied with the award of the Master and appealed to this court. On March 25, 2016, the appeal was allowed and the award of the Master was varied by increasing the sum awarded as general damages to \$1,102,015. Interest was also awarded on the said sum at the same rate as did the Master, namely 9% per annum, but to run from the date of the writ, i.e. March 19, 1991 to the date of the assessment, July 8, 2011. It was also ordered that the respondent pay the appellant's costs of the appeal.
9. After the appeal was heard and determined, the respondent tendered a cheque for the assessed damages as varied by the Court of Appeal. The cheque included a sum for interest on the assessed damages calculated at the statutory rate under section 13 of the Act (now section 13(1)) but from the date of the order of the Court of Appeal. The appellant in a letter to the respondent indicted that the appellant was entitled to interest on the assessed damages as varied by the Court of Appeal from the date of the assessment of damages by the Master and demanded payment of that further amount. The respondent, however did not agree. A dispute has therefore arisen between the parties as to whether statutory interest under section 13(1) of the Act ran on

the award as varied by the Court of Appeal from March 25, 2016, being the date of the judgment of the Court of Appeal or from the date of the assessment by the Master on July 8, 2011. To put it briefly, the appellant's position is that interest runs from the date of the assessment of damages by the Master on the award of damages as varied by the Court of Appeal, whereas the position of the respondent is that interest accrues from the date of the order of the Court of Appeal. Accordingly, the appellant has applied to this court for an order that on a proper construction of the order of the Court of Appeal interest accrues under section 13(1) of the Act from the date of the assessment of the Master on the award of damages as varied by the Court of Appeal.

10. It is convenient at this stage to set out section 13(1) of the Remedies of Creditors Act. This section is as follows:

*Every judgment debt entered up carries interest at the rate of five percent from the time of entering up the judgment until the same is satisfied, and the interest may be levied under a writ of execution on the judgment.*

11. Counsel for the appellant submitted that under this section interest runs from the date that damages were first assessed. This was the date of the assessment by the Master. Although it was open to the Court of Appeal to set aside the Master's order and grant a fresh order, it did not do that. Instead, it varied the order and it follows that interest should run on the varied amount from the date of the Master's order.
12. Counsel for the respondent argued to the contrary. He submitted that the effect of the order of the Court of Appeal is to overrule the order of the Master. The order spoke from the date it was made. He referred to O. 42 r 3(1) of the Rules of the Supreme Court, 1975 (which are the rules applicable to these proceedings) which he argued made that clear. This provided that a judgment or order of the court takes effect from the day of its date. Counsel further submitted that the case of **Borthwick v The Elderslie Steamship Company, Ltd (No. 2) [1905] 2 K.B.**, along with the wording of section 13(1) make it clear that interest is to be awarded from the date of the judgment of the Court of Appeal.

13. It is clear under section 13(1) that interest runs from the time of “the entering up of the judgment”. The question raised by this application is when is the judgment entered up for the purposes of section 13(1) in circumstances where the award of damages is varied by the order of the Court of Appeal.
  
14. It has been held that subject to the right of the court to order that the judgment takes effect on some other date, the time of the entering up of the judgment in section 13(1) refers to the date the judgment was given in court and not the date the order was formally passed and entered (see **Parsons v Mather and Platt Ltd [1977] 2 All ER 715** and **Erven Warnink BV and Ors v J Townend and Sons (Hull) Limited and Ors (No. 2) [1982] 3 All ER 312**). It has also been held that where, as in this case, there is an interim or interlocutory judgment for damages to be assessed and a later judgment quantifying the damages, the time of entering up of the judgment, for the purposes of section 13(1), is the date damages were assessed and interest under the section runs from that date (see **Thomas v Bunn [1991] 1 A.C. 362**).
  
15. In the light of those authorities if there were no appeal from the decision of the Master, there would be no doubt that interest under section 13(1) of the Act runs from the date of the assessment. Does the fact that the Master’s award was varied by the Court of Appeal alter that position? Counsel for the respondent has submitted that the **Borthwick** case makes it clear that it does and interest runs from the date of the judgment of the Court of Appeal.
  
16. In **Borthwick**, which is a decision of the English Court of Appeal, the trial judge gave judgment for the defendant. An appeal to the Court of Appeal was allowed and judgment was entered for the plaintiff for “such sum as may be assessed by a referee to be agreed by the parties”. Upon further appeal to the House of Lords, the judgment of the Court of Appeal was affirmed. The assessment of damages was stood over pending the appeal to the House of Lords. However, after the decision of the House of Lords, the amount for which judgment should be entered was agreed between the parties. It was also agreed by them that interest should be paid by the defendant but no time was specified. The agreed amount was paid but a dispute arose as to the date from which interest ought to run under section 17 of the Judgment’s Act 1838 (UK), which

is the equivalent to section 13(1) of the Act. The defendants argued that interest ran from the time when the amount of damages was determined, whereas the plaintiff contended that interest ran from the date of the judgment of the trial judge as the judgment of the Court of Appeal should be regarded for all purposes as if it had been given by the trial judge. It was held that the interest ran from the date of the judgment of the Court of Appeal, that being the first judgment in favour of the plaintiff.

17. Collins M. R. was of the view that the judgment of the Court of Appeal was a judgment as of the date on which it was given unless it was antedated. It followed that interest accrued from the date of that judgment. Romer L.J. agreed with Collins M. R. and said (at pp 521-522):

*“When a plaintiff has failed in the court below so that his action has been dismissed, if he succeeds on appeal it cannot, I think be properly said that the judgment of the Court of Appeal must be regarded for all purposes as if it had been the judgment given by the judge in the Court below. The judgment in favour of the plaintiff must be treated as of the date on which it was given in the Court to Appeal, subject to the right of that Court to antedate its judgment. That right should, in my opinion, be exercised with caution. In the present case the plaintiff failed at the trial; but this Court took the view that he was entitled to recover damages, the amount of which remained to be ascertained. The amount has since been ascertained, and must be treated as if it had been mentioned in the judgment of this court; and the result is that the plaintiff has a judgment for an ascertained sum, dated on the day on which it was pronounced. It was certainly not antedated at the time it was given, and I do not see any sufficient ground for now antedating it.”*

The **Borthwick** case, therefore, supports the proposition that when the Court of Appeal first gives judgment for a such sum as may be assessed in favour of the plaintiff, interest will run from the date of the judgment of the Court of Appeal, the damages subsequently assessed being treated as if it were mentioned in the judgment of the Court of Appeal.

18. **Borthwick**, however, was overruled by **Thomas v Bunn**. In that case the House of Lords heard appeals in three separate actions in each of which there was an interim or interlocutory judgment for the assessment of damages. The question arose, whether under section 17 of the Judgments Act 1838 (which is the equivalent to section 13 (1) of the Act), interest ran from the date of the interlocutory judgment or from the date of the judgment on the assessment of damages. It was held that interest accrued from the date of the judgment assessing or quantifying the damages. Lord Ackner stated:

*“The wording of section 17 clearly envisages a single judgment which constitutes the ‘judgment debt’. This ‘judgment debt’ can only arise where the judgment itself quantifies the sum which the judgment debtor owes to the judgment creditor. The language of the section does not envisage an interlocutory judgment, but only a final judgment.”*

19. To the extent, therefore, that **Borthwick** held that interest under section 17 of the Judgments Act 1838 (section 13(1) of the Act), runs from the date of the liability judgment (as opposed to the assessment of damages), it seems to have been overruled by **Thomas v Bunn**. The effect of **Thomas v Bunn** on **Borthwick** would be that in **Borthwick**, interest would run from the date damages were assessed and not the date of the judgment determining liability and ordering the payment of damages to be assessed. In this matter it is not disputed that interest would not run earlier than the date of the assessment of damages by the Master. But the question before this court was not raised in **Borthwick**. It is in those circumstances difficult to accept the submission of counsel for the respondent that it is clear from the **Borthwick** case that interest runs from the date of the judgment of the Court of Appeal.

20. In **Nitrate Producers Steamship Co, Ltd v Short Bros, Ltd [1922] ALL ER Rep 710**, the issue before the court was as to the effective date of the judgment. In that case the trial judge on April 2<sup>nd</sup> 1919, dismissed an action against the respondent for damages for breach of contract. He was of the view that the respondent did not commit a breach of contract. The trial judge, however, provisionally assessed damages in the amount of £50,000 in the event it should be held on appeal that he was wrong in his decision on the question of the breach of contract. The trial judge’s judgment was affirmed on appeal to the Court of Appeal. On further to the House of Lords, the House of Lords, on July 1, 1921, reversed the judgment of the trial judge and of the Court of Appeal and ordered that judgment be entered for the plaintiff. It was further ordered by the House of Lords that the matter be remitted back to the Kings Bench Division of the High Court “to do therein as shall be just and consistent with this judgment”.

21. It was subsequently ordered by the High Court that the plaintiff be at liberty to sign judgment for the sum of £50,000 as of April 2<sup>nd</sup> 1919 being the date of the judgment of the trial judge. On appeal to the Court of Appeal, it was held that the High Court had no jurisdiction to order that

the judgment be dated as of any date other than the date of the order of the House of Lords, namely, July 1<sup>st</sup> 1921. On further appeal to the House of Lords, the House of Lords agreed that the effective date was July 1<sup>st</sup> 1921. Lord Buckmaster, with whom the other Law Lords agreed, stated (at p 712-713):

*“If at the time when the matter originally came before your Lordships’ House on 1 July 1921, it had been desired that the order then made should speak as from a date different from that on which it was pronounced, it was incumbent upon counsel to ask if this should be done. In the absence of any such direction, where judgment is, for the first time, directed to be entered in favour of any litigant party by this House, the date which that judgment will bear must be the date when the order is made.”*

The date of the pronouncement of the order the House of Lords was therefore the effective date of the judgment and the date from which interest would accrue.

22. It would seem though that the decision in the **Nitrate Producers Steamship Company Limited** case should be read in the light of **Thomas v Bunn**, (*supra*). In that event there would be no good reason why interest should run before judgment was entered for the sum of £50,000 or, in other words, the date from which the damages under the liability judgment of the House of Lords was first assessed by the High Court after it was remitted by the House of Lords.. That apart, the Nitrate Producers Steamship Company Limited case is consistent with **Borthwick** and seems to support the position of the appellant that the relevant date of the entering up of the judgment is when damages are first quantified. In neither case, however, was the court asked to consider circumstances similar to this case, this is to say, when damages were first assessed by the Master but the award was subsequently varied by the Court of Appeal. But in that regard, of note is the dicta of Lord Buckmaster when he said (at p. 712):

*“It is, of course, a totally different proposition where the effect of an order in this House is to restore a judgment of the Court of first instance which has been reversed by an order of the Court of Appeal. In that case, the judgment of the Court of first instance is expressly restored and remains standing as from the date of when it was given. But, in this case, there was no judgment until the time it was directed that that judgment should be entered and made.”*

23. Where, therefore, the effect of the judgment of the House of Lords is to restore the judgment of the trial judge that was set aside by the Court of Appeal, the date of the entering up of the judgment is the date of the judgment of the trial judge. According to Lord Buckmaster, the



judgment is restored and “remains standing” as from the date it was first given. If the effect of the restoration of the judgment of the trial judge that was set aside is that it is a judgment of the date it was first given, then it seems to us to be an a fortiori case where the judgment of the Court of Appeal is to vary the award of damages made by the Master. The judgment of the Master remains entered up from the date of the assessment and in those circumstances interest should run from the date of the judgment of the Master.

24. That indeed is the position as appears from the case of **Cook v JL Kier and Co. Ltd [1970] 2 ALL ER 513**. In that case the judge awarded damages for personal injuries in the sum of £9,589, 10s and 10p. On appeal to the Court of Appeal, the award was increased to £15,045, 10s, 10p, thereby increasing the damages awarded by £5,456. The Court of Appeal observed that the amount of £5,456 by which the award of the trial judge was increased would date back to the judgment of the trial judge and interest will automatically run on the increased amount of £15,045, 10s, 10p from the date of the judgment of the trial judge under the Judgements Act 1838. The Court of Appeal was therefore of the view that where the award of the trial judge is varied by the Court of Appeal, the variation would date back to the judgment of the trial judge and would run from the date damages were first awarded by the trial judge.

25. We are of the respectful view that the position of the Court of Appeal in the **Cook** case is correct and the same applies here. The variation of the award dates back to the date of the entering up of the judgment of the Master, or in other words the date of the making of the order on the assessment of damages by the Master, and interest would therefore run from the date of that order on the amount as varied by the Court of Appeal. It follows that we agree with the position of the appellant that interest accrues under section 13(1) of the Act at the statutory rate from the date of the assessment of damages on the award as varied by the Court of Appeal.

26. The rate of interest as now provided for in section 13(1) of the Act is as a result of a recent amendment to the Act by Remedies of Creditors (Amendment Act) 2016. This amendment was assented to on September 23, 2016. Prior to that amendment the rate of interest was 12% per annum. That rate was introduced by the Supreme Court of Judicature (Amendment) Act, 2000,

which amended section 13 of the Remedies of Creditors Act by varying the rate of interest from 6% to 12%. It seems to us that the effect of the 2016 amendment to section 13(1) of the Act is to vary the rate of interest as of the date of coming into effect of the amendment but prior to that the effective rate of interest would have been 12% from the 2000 amendment to the date of the amendment in 2016.

27. The Supreme Court of Judicature (Amendment) Act, 2000 also introduced a new section, namely section 25A of the Supreme Court of Judicature Act. Section 25A (1) is for all intents and purposes identical to section 13(1). In **Civ. App. 114 of 2011 Bhagan and Bhagan v Motor and General Insurance Company Limited**, this court expressed the view that although it was unclear why it was thought necessary to introduce section 25A (1), it cannot have a different effect than section 13(1) of the Act.

28. In conclusion therefore we are of the view that interest accrues on the award of damages as varied by the Court of Appeal at the statutory rates as referred to above from July 8, 2011, being the date of the assessment of damages by the Master.

29. The respondent shall pay the costs of the application to the appellant to be taxed.

Dated 13<sup>th</sup> February, 2017

A. Mendonça,  
Justice of Appeal

P. Jamadar,  
Justice of Appeal

G. Smith,  
Justice of Appeal